

**STECICH MURPHY & LAMMERS**

ATTORNEYS & COUNSELORS AT LAW

828 SOUTH BROADWAY, SUITE 201

TARRYTOWN, NEW YORK 10591-6650

TELEPHONE: 914 674-4100 FAX: 914 674-2987

MARIANNE STECICH

BRIAN D. MURPHY

EDWARD G. LAMMERS

OF COUNSEL

IRA S. LEVY

VIA FAX (995-4111) AND FIRST CLASS MAIL

Hon. Francis A. Nicolai  
Westchester County Supreme Court  
111 Dr. Martin Luther King, Jr. Boulevard  
White Plains, New York 10601

Re: Village of Croton-on-Hudson v. Northeast Interchange Railway, LLC et al.  
Index No. 05-22176

Dear Justice Nicolai:

Thank you for giving the Village of Croton-on-Hudson an opportunity to reply to the letters dated March 14, 2006 from David Steinmetz and John McManus. I appreciate your patience in this matter and will keep my reply short.

To extend the two ships metaphor one step further, defendants' argument – that as a prior nonconforming use a C&D waste facility can “be continued indefinitely” – rather than “mak[ing] it back to shore,” runs aground, because there is no law to support it. Just because a use is a prior nonconforming use does not mean that § 230-53 of the Zoning Code (as well as its identical predecessor, §7.1) entitles the use to “be continued indefinitely.” Section 230-53, which defendants rely on and which regulates nonconforming uses, provides that only “buildings and uses *existing on the effective date* of this chapter, which buildings and uses do not conform to the requirements set forth in this chapter . . . may be continued indefinitely.” A copy of § 230-53 is enclosed with this letter.

A C&D waste facility did not exist at 1A Croton Point Avenue in 1990, when the new zoning code was adopted. In 1990 a wood waste facility operated at that location. Even if the use were defined more broadly as solid waste operations, that use was not a prior nonconforming use protected by the immediately prior code, the 1979 Zoning Code, because Liguori's wood waste facility did not exist in 1979. That is why Liguori, in

Hon Francis A. Nicolai

March 14, 2006

Page 2

1986, applied for a nonconforming use special permit to use 1A Croton Point Avenue as a wood waste facility. Defendants, therefore, have no legal basis for arguing that a C&D waste facility can "be continued indefinitely" at 1A Croton Point Avenue.

If this Court were to rule that a C&D waste facility could continue to operate at 1A Croton Point Avenue, such nonconforming use would require a special permit – as was required of both Metro Enviro and Liguori. What defendants' papers ignore is the fact that the waste processing use was allowed at 1A Croton Point Avenue only by virtue of Metro Enviro's nonconforming use special permit, and, previously, Liguori's special permit. Metro Enviro's special permit expired and was not renewed. Therefore, the right to operate the use expired as well.

If the Court agrees with defendants that a waste management facility may continue at the site, it could continue only by means of another nonconforming use special permit. Otherwise, Metro Enviro's loss of its special permit would have given subsequent operators greater rights than Metro Enviro ever had. It must be recalled that Metro Enviro had to apply for renewal of its nonconforming use special permit. It was during this renewal process that the Village examined Metro's compliance record and determined that, on the basis of the many and substantial violations of the conditions of the special permit, the special permit should not be renewed. The special permit expired in 2001 and was revoked in 2003, and the revocation was upheld by the Court of Appeals in 2005. A new operator cannot revive this dead permit in 2006 by simply moving in without even applying for a permit.

If the Village is not given the opportunity to examine the compliance record of whatever company seeks to continue solid waste processing at the site, it will have been stripped of its power, and responsibility, to ensure that anyone operating a nonconforming use in the Village is likely to so in such a way as not to harm the health, safety and welfare of the Village.

Again, thank you for your patience in this matter.

Sincerely,



Marianne Stecich

- [2] A wall or fence, of location, height and design approved by the Planning Board, may be substituted for the required planting.
  - [a] Modifications. Where the existing topography and/or landscaping provides adequate screening, the Planning Board may modify the planting and/or buffer area requirements.
  - [b] Maintenance and responsibility. All planting shown on an approved site plan or special permit plan, including planting within a street right-of-way, shall be maintained by the property owner in a vigorous condition throughout the duration of the use, and plants not so maintained shall be replaced with new plants at the beginning of the next immediately following growing season.
- [3] All new plant materials shall be consistent with the existing vegetation of the site and the surrounding areas. Plant materials judged to be inappropriate by the Planning Board will not be approved.

#### ARTICLE IX

#### Nonconforming Buildings and Uses

##### § 230-53. Regulation and control.

Subject to the provisions of § 230-54, the following provisions shall apply to all buildings and uses existing on the effective date of this chapter, which buildings and uses do not conform to the requirements set forth in this chapter, to all buildings and uses that become nonconforming by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof and to all conforming buildings housing nonconforming uses:

- A. Any nonconforming use, except those nonconforming uses specified in Subsection E may be continued indefinitely, but:
  - (1) Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever. **[Amended 1-19-1999 by L.L. No. 1-1999; 11-15-1999 by L.L. No. 10-1999]**
  - (2) Shall not be changed to another nonconforming use without a special permit from the Village Board of Trustees and then only to a use which, in the opinion of said Board, is of the same or a more restricted nature.
  - (3) Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more or has been changed to or replaced by a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.
- B. Except as provided in Subsection D below, no building which houses a nonconforming use shall be:

- (1) Structurally altered or enlarged.
  - (2) Moved to another location where such use would be nonconforming.
  - (3) Restored for other than a conforming use after damage from any cause exceeding 50% of the replacement cost of such building, exclusive of foundations. Any such building, damaged to a lesser extent may be restored but not enlarged and the nonconforming use reinstated within one year of such damage; if the restoration of such building is not completed within said one-year period, the nonconforming use of such building shall be deemed to have been discontinued unless such nonconforming use is carried on without interruption in the undamaged portion of such building.
- C. Normal maintenance and repair, structural alteration in or moving, reconstruction or enlargement of a building which does not house a nonconforming use but is nonconforming as to the district regulations for lot area, lot width, front yard, side yard, rear yard, maximum height, maximum lot coverage or minimum habitable floor area per dwelling is permitted if the same does not increase the degree of or create any new nonconformity with such regulations in such building. **[Amended 1-21-1985 by L.L. No. 1-1985]**
- D. Nothing in this article shall be deemed to prevent normal maintenance and repair of any building, the carrying out upon the issuance of a building permit of major structural alterations or demolitions necessary in the interest of public safety. In granting such a permit, the Village Engineer shall state the precise reason why such alterations were deemed necessary.
- E. Each of the nonconforming uses specified below is deemed sufficiently objectionable, undesirable and out of character in the district in which such use is located as to depreciate the value of other property and uses permitted in the district and blight the proper and orderly development and general welfare of such district and the Village to the point that each of such nonconforming uses shall be terminated on or before the expiration of the specified period of time after November 10, 1960, which period of time as specified for the purpose of permitting the amortization of the remaining values, if any, of such use shall be as follows:
- (1) In any residence district, any nonconforming use of open land, including such uses as a parking lot, trailer, junkyard or open storage yard for materials or equipment, may be continued for two years after November 10, 1960, provided that on the expiration of that period such nonconforming use shall be terminated.
  - (2) In any residence district, any sign not of a type permitted or of a permitted type but greater than two times the maximum permitted size may be continued for one year after November 10, 1960, provided that on the expiration of that period such nonconforming use shall be terminated.
  - (3) In any nonresidential district, any sign not of a type permitted or of a permitted type but greater than two times the maximum permitted size may be continued for two years after November 10, 1960, provided that on the expiration of that period such nonconforming use shall be terminated.